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FEDERAL COMMUNICATIONS COMMISSION
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January 13, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
Washington, DC 20554

**Re: Report of Ex Parte Communication
MM Docket No. 87-268**

Dear Ms. Salas:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, this is to report that an **oral ex parte** meeting was held on January 12, 1998, attended by the following persons:

Susan Fox, Senior Legal Advisor to Chairman William E. Kennard
Peter Tannenwald, Counsel for the Community Broadcasters Association

The discussion at this meeting covered a wide range of issues of interest to the low power television industry. One of those issues pertains to the transition to digital television, which is the subject matter of the above-referenced rule making proceeding. After the meeting, I left behind a memorandum summarizing the points I made. This memorandum was also **e-mailed in written form** to the following:

David R. Siddall, Legal Advisor to Commissioner Susan Ness
Helgi Walker, Legal Advisor to Commissioner Harold Furchtgott-Roth
Jane E. Mago, Senior Legal Advisor to Commissioner Michael Powell
Rick Chessen, Senior Legal Advisor to Commissioner Gloria Tristani

The portions of that memorandum pertaining to matters at issue in MM Docket No. 87-268 are quoted below:

a. **Digital Allotment Table.** The Commission's digital allotment computer program searched for the best possible channels for DTV but ignored existing LPTV stations. It is natural, therefore, that the program selected many channels for full power

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digital use that are occupied by LPTV stations, because the FCC's program and programs used to find LPTV channels are both looking for the same thing -- spectrum that can be used with the least impact. It was not necessary to be so harsh to LPTV. For example, when the computer found two channels available for digital use, it should have rejected the one occupied by an LPTV station; but it did not.

Two private parties attempted to run the allotment program on their own. MSTV designed some software of its own, using the resources of the most wealthy full power stations. While MSTV publicly expressed sympathy for LPTV stations and translators, particularly since some of its members operate translators; MSTV did not build any LPTV protection into its program. CBA also attempted to run the program. We were unable to obtain the Commission's software until 1996, so we got a much later start than either the Commission or MSTV. We also had to collect funds from stations with far less wealth than MSTV's members, finance computer equipment and a professional person to operate it and to modify the software. CBA's first attempt was stopped in April of 1997, when the Commission announced its allotment table in the *Sixth Report and Order* in MM Docket No. 87-268. The results of CBA's work were not as good as CBA had hoped, but CBA did demonstrate that it was possible to protect at least some LPTV stations while still achieving the Commission's DTV objectives.

When many reconsideration petitions were filed, and it appeared that the allotment table in the *Sixth Report and Order* was not acceptable to the entire full power industry, CBA made another attempt at developing a table and this time was much more successful. Instead of trying to give LPTV stations absolute protection as it had done before, CBA assigned a varying penalty for displacing an LPTV station. The result was that CBA developed an allotment table that saved about 40% of the almost 800 stations that registered their operating parameters with CBA, without increasing interference to full power digital operation by any statistically meaningful amount. CBA filed its results on December 15, 1997. A year ago, everyone (including OET Staff) said that the allotment program was too complicated to introduce new factors and that it would be impossible to meet the objective of replicating existing full power coverage if protection for LPTV stations were introduced. CBA has proved that statement wrong. CBA's table is not perfect, but it does prove that had LPTV been taken into account at the start, many fewer stations would be displaced than will be the case if the Commission's table is used as announced in the *Sixth Report and Order*. Section 307(b), which requires a fair and equitable distribution of frequencies throughout the nation, requires that attention be given to preserving LPTV. Without such attention, the digital transition will result in concentrating television spectrum in larger markets, contrary to the statute.

b. **ALTV Petition for Higher Digital Power for Some UHF Stations.** The ALTV request to give some UHF stations higher power will complicate the problem of

Magalie Roman Salas, Secretary

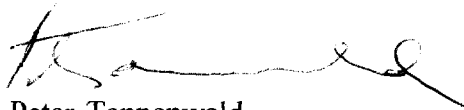
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saving LPTV stations. It is CBA's position that operators whose full power stations are at less than maximum power today have made past economic decisions to save money by not building maximum facilities, which decisions should be equally valid in the future digital environment.

c. **Relief for Displaced LPTV Stations.** While LPTV stations facing displacement by full power digital facilities may file for new channels without waiting for an LPTV application filing window, they must wait for the full power station to file its Form 301 construction permit application. Because the time the full power station will file is beyond the LPTV operator's control, the LPTV operator cannot plan adequately for its future. LPTV stations need an opportunity to file immediately to move to new channels. In addition, full power stations that will be displacing LPTV stations should be required to notify the LPTV station at least six months, if not one year, before they plan to commence digital operation, instead of showing up at the last minute, giving the LPTV operator no time to find a new home.

Very truly yours



Peter Tannenwald
Counsel for the Community
Broadcasters Association

cc: Susan Fox, Esq. (e-mail)
David R. Siddall, Esq. (e-mail)
Helgi Walker, Esq. (e-mail)
Jane E. Mago, Esq. (e-mail)
Rick Chesson, Esq. (e-mail)
Mr. Sherwin Grossman (CBA)
Mr. Michael J. Sullivan (CBA)